THE HON'BLE MS. JUSTICE G. ROHINI

W.P.No. 4883 of 2004

ORDER :

The writ petitioner availed loan of Rs.60,000/- from the Pragathi Building Co-operative Society Limited, 1st respondent, in the year 1993. Though part of the said amount was paid, it appears that the petitioner subsequently committed default and consequently on an application made by the 1st respondent, a recovery certificate was issued on 10-5-1994 by the 2nd respondent - Deputy Registrar/Regional Manager, A.P. Co-operative Housing Federation Limited under Section 71 (1) of the A.P. Co-operative Societies Act, 1964 (for short, 'the Act'). Even thereafter the petitioner failed to pay the amount due and in the circumstances the 1st respondent filed E.P.No.71/1996-97 for sale of the mortgaged property. In the execution proceedings when auction was proposed to be conducted for sale of immovable property belonging to the petitioner, this writ petition has been filed seeking a declaration that the action of the respondents in issuing sale notice dated 13-02-2004 as arbitrary and illegal.

The only contention raised by the petitioner is that having availed loan of Rs.60,000/-, she had already paid Rs.98,400/- and therefore the 1st respondent is not justified in claiming further amounts and proposing sale of the mortgaged property for recovery of the said amounts.

Heard both sides and perused the material on record.

At the outset, it is to be noted that the recovery certificate under Section 71 of the Act was issued long back on 10-5-1994 and admittedly the same has become final since the petitioner failed to challenge the same by working out the appropriate remedy as available under law. It is also relevant to note that under Sub-section (3) of Section 71 of the Act, a certificate issued by the Registrar under Sub-section (1) or Sub-section (2) of Section 71 of the Act shall be final and conclusive proof of the arrears stated to be due therein. Hence, the

action of the first respondent in proceeding to execute the certificate following the procedure prescribed under the Act and the Rules made thereunder cannot be found fault with.

However, it is to be noted that Rule 52 of the A.P. Co-operative Societies Rules, 1964 (for short, 'the Rules') provides in detail the procedure for execution of the decrees, decisions or orders passed by the Registrar under the Act. Under Sub-rule (11) of Rule 52 of the Rules, the procedure to be followed for sale of immovable property has been prescribed which includes an opportunity to the defaulter to pay the amounts due prior to the sale and even thereafter, but before the sale is confirmed. Hence, it is always open to the petitioner to pay the amounts due if she so chooses in terms of Rule 52 of the Rules. It is also relevant to note that once the sale is effected and a sale certificate is issued, a further remedy of appeal is provided under Section 76 of the Act.

In the circumstances, the Writ Petition which is devoid of any merit is dismissed. However, liberty is granted to the petitioner to work out the appropriate remedy as provided under Rule 52 of the Rules. No costs.

02 February, 2006

BJ/